

REMARKS

The official action sets forth a requirement for restriction among the following groups of claims:

Group I, claims 1-10, said to be drawn to a motor with a magnetic wire pole having a fuse;

Group II, claims 11-19, said to be drawn to a method of making a motor;

Group III, claims 20-27, said to be drawn to a motor with terminals on the brush holder; and

Group IV, claim 28 and 29, said to be drawn to a method of assembly brush housing.

In order to comply with the restriction requirement, the applicants hereby elect to prosecute Group II, corresponding to claims 11-19. However, this election is made **with traverse**, for the reasons stated herein, and applicants request that both Groups I and II be examined.

I. The Restriction Requirement is Improper for Failure to Set Forth a Proper Showing.

The restriction requirement is improper because the office action has not met its burden in showing how the product as claimed can be made by another and materially different process. MPEP §808.02 requires that, "in order to establish reasons for insisting upon restriction, [the examiner] must show *by appropriate explanation*" (emphasis added) that each of the claim groups requires... (A) a separate classification."

The only explanation provided by the official action is that "the motor [of claim 1] can be made by other materially different processes [than claim 11]... rather than severing the wire." While process claim 11 does recite the step of "severing the first magnet wire between the input terminal and the exit terminal," product claim 1 recites "the first magnet wire being severed between the input terminal and the exit terminal." Accordingly, appropriate explanation has not been provided and the restriction requirement between Groups I and II should be withdrawn.

II. Effect of Upholding the Restriction Requirement.

The effect of the Patent Office upholding the improper restriction requirement is that the Patent Office admits that the claims of Group II are patentably distinct over the disclosure of the claims of Group I. MPEP §802.01 states that distinctness for a restriction requirement means that two or more subjects as claimed "ARE PATENTABLE (novel and unobvious) OVER EACH OTHER" (emphasis in original). Thus, the examiner is admitting that the process of claim 11 is

patentable over any disclosure of a motor of claim 1, and vice versa. This position is necessary to entry of the restriction requirement by the Patent Office.

If the restriction requirement is upheld, the applicants can and will rely on this admission during examination of this application and any continuing or divisional applications. If this position is not to be taken by the Patent Office, then the applicants request that the restriction requirement be withdrawn.

CONCLUSION

Reconsideration and withdrawal of the restriction requirement between Groups I and II is solicited for the foregoing reasons. As a result, consideration and examination of claims 1-19 pending in the application is further solicited.

Should the examiner wish to discuss the foregoing or any matter of form in an effort to advance this application toward allowance, the examiner is invited to telephone the undersigned at the below-listed number.

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Respectfully submitted,

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